

NATURAL RESOURCE COMMISSION[571]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code subsections 455A.5(6) and 462A.32(1), the Natural Resource Commission hereby amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

The amendment is in response to a rule-making petition submitted by the City of Harpers Ferry. The City is requesting that the current 5-mile-per-hour zone on the Mississippi River be expanded 550 feet downstream from the current southernmost marker buoy. The request is being made due to boat navigation and safety issues along existing river access points, such as docks and boat ramps.

The Commission approved the original Notice of Intended Action on July 11, 2011. The Notice was published in the August 10, 2011, Iowa Administrative Bulletin as **ARC 9658B**. A public hearing was held on August 30, 2011. No one attended the hearing, and no public comments were received during the comment period. Additionally, the Notice was on the Administrative Rules Review Committee's (ARRC) September 13, 2011, agenda; no agency presentation was requested, and no ARRC comments were made.

Due to staff oversight, the original rule making was not brought before the Commission to be Adopted and Filed. Subsection 1, paragraph "b," of Iowa Code section 17A.4 states that 180 days after publication of the Notice or the last public meeting, whichever is later, the rule making is automatically terminated if not adopted and filed. Thus, the original Notice for this rule making was terminated.

The Commission has decided to address this oversight by proceeding with an Adopted and Filed Emergency rule making. The Commission is doing so for the following reasons: (1) The substance of this rule making has already been published once, and a public comment period has already been held with no public participation, indicating this is not a controversial amendment; and (2) A second round of public participation seems unnecessary and would only further delay this amendment, which is designed to protect the safety and welfare of citizens near Harpers Ferry's Mississippi River shoreline. Moreover, this rule making is now necessary to allow the no-wake safety buoys to be moved for the upcoming boating season.

In compliance with Iowa Code section 17A.4(3), the Commission finds that notice and public participation are unnecessary because this amendment has already been published under Notice of Intended Action and no comments were received during the comment period or at the public hearing. Since no changes have been made to the intent or language of the amendment from that original Notice, a second round of public comment is redundant.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective on April 13, 2012, as it confers a benefit on the City of Harpers Ferry by addressing boat navigation and safety issues along existing river access points, such as docks and boat ramps, by reducing the speed of passing vessels.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 462A.32(1).

This amendment became effective April 13, 2012.

The following amendment is adopted.

Rescind subrule 40.27(1) and adopt the following new subrule in lieu thereof:

40.27(1) All vessels operated in Harpers Slough between a point 200 feet above the state ramp and 200 feet out from the west shore and extending 550 feet downstream from a point known as Sandy Point Road Dead-End shall operate at a speed not greater than 5 miles per hour.

[Filed Emergency 4/12/12, effective 4/13/12]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/2/12.